IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY NINETH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE A.GOPAL REDDY

WRIT PETITION No. 17511 of 2004

Between:

1 Karukonda Krishna Murthy S/o Late Mutyalu
R/o.D.No.36-26-3, Kothareddy Kancharapalem, Visakhapatnam-8.
2 Malla Nukaraju S/o Late Guru Murthy
R/o.D.No.36-26-4/3, Kothareddy Kancharapalem, Visakhapatnam-8.
3 Malla Venkateswara Rao S/o Late Malla China Apparao
R/o.D.No.36-26-4/1, Kothareddy Kancharapalem, Visakhapatnam-8.
4 Silaparasetty Chiranjeev Rao S/o Late Yellaiah
R/o.D.No.36-18-8, Kothareddy Kancharapalem, Visakhapatnam-8.

..... PETITIONERS

AND

The Municipal Corporation of Visakhapatnam, rep. by its

Commissioner, Visakhapatnam.

.....RESPONDENT

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue a writ, order or direction more particularly one in the nature of writ of mandamus declaring the action of the respondent in attempting to demolish the petitioners house structures without giving any notice nor giving any opportunity of being heard is illegal, arbitrary and unjust apart from violation of principles of natural justice and consequently direct the respondent not to interfere with petitioners peaceful possession and enjoyment of their house bearing D.No.36-26-3, D.No.36-26-4/3, D.No.36-26-4/1, D.No.36-18-8, Kothareddy Kancharapalem, Visakhapatnam-8 without following the due process of law.

Counsel for the Petitioners : Ms.G.JAYA REDDY

Counsel for the Respondent: Mr.T.S.VENKATARAMANA

The Court made the following :

ORDER:

Heard the learned counsel for petitioner and the learned counsel for Respondent Corporation, and both of them agreed for disposal of the writ petition finally at the stage of admission.

The petitioners claims to be owners of the house properties in question and the respondent has demarcated their houses for the purpose of road widening and tried to demolish the structures which is in occupation of the petitioners without following the due process of law. Hence the present writ petition.

It is well settled by a catena of decisions of this Court that the property of citizens for widening of roads can only be acquired by following the procedure contemplated under the provisions of the Hyderabad Municipal Corporation Act. In view of the same, the respondent, without following the recourse to the provisions under Sections 146 and 147 of the Hyderabad Municipal Corporation Act, 1955 cannot demolish the structures, which is in occupation of the petitioners, for the purpose of road widening. The Respondent-Corporation either has to obtain consent of the owner or if the owner refuses to give consent, necessary proceedings under Land Acquisition Act can be initiated and if it is found that the petitioners are encroachers, notices should be given to the petitioners for removal of such encroachments. Without following any of these procedures, the Respondent-Corporation cannot take possession of the property nor demarcate the property.

This Court disposed of W.P.No.3607 of 2004 on 26.02.2004 holding that the respondent – authorities cannot dispossess the persons who are in occupation of the land, as the authorities are under obligation to follow the procedure contemplated under the provisions of Hyderabad Municipal Corporation Act and without following the said procedure, the occupants cannot be dispossessed from

their respective premises.

In the circumstances, the writ petition is disposed of directing the respondent-Municipal Corporation to follow the procedure laid down by this Court in acquisitioning the land in possession of the petitioners for the purpose of road widening. No order as to costs.

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A.GOPAL REDDY, J

Date: 29.9.2004

NOTE:

Wire at Party's costs.

B/o

DA

To

1. The Commissioner, Municipal Corporation of Visakhapatnam, Visakhapatnam.
2. Two CD copies.